

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JASON LEE SUTTON,

Plaintiff,

v.

STEPHEN SINCLAIR, *et al.*,

Defendants.

Case No. C19-1119-BJR-MLP

ORDER RE: PLAINTIFF'S PENDING
MOTIONS

I. INTRODUCTION

Plaintiff Jason Sutton is a state prisoner who is proceeding with this civil rights action *pro se*. This matter comes before the Court at the present time on Plaintiff's motion for leave to amend his complaint (dkt. # 27), and on his motion for a show cause hearing and for sanctions against Defendants (dkt. # 30). Defendants oppose both motions. (Dkt. ## 28, 31.) Also pending at this time is Defendants' motion for summary judgment. (Dkt. # 19.) Plaintiff, to date, has not filed any response to that motion. The Court addresses each of the pending motions below.

II. DISCUSSION

A. Motion for Leave to Amend

Plaintiff seeks leave to amend his complaint to add a new Defendant to this action. (Dkt. # 27.) Plaintiff alleged in his original complaint, filed in July 2019, that his outgoing mail and

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1 electronic messages were improperly rejected by corrections staff at the Clallam Bay Corrections
2 Center (CBCC) and at the Monroe Correctional Complex (MCC). (*See* Dkt. ## 1, 6.) Plaintiff
3 identified as Defendants in his complaint the Washington Department of Corrections (DOC),
4 DOC Secretary Stephen Sinclair, and various members of the corrections staff at CBCC and
5 MCC.

6 Plaintiff now seeks to add to this action Tammy O'Reilly, a member of the MCC
7 mailroom staff who was involved in the restriction of one of the electronic messages at issue in
8 this case. (Dkt. # 27 at 8.) Plaintiff claims he only became aware of this individual's identity in
9 February 2020 when Defendants supplemented their discovery requests just prior to filing their
10 now pending motion for summary judgment. (*See id.*) Plaintiff believes Ms. O'Reilly is a
11 necessary addition to this action and he alleges that Defendants waited until the last minute to
12 provide her name so that he would have difficulty adding Ms. O'Reilly as a Defendant and
13 would be prevented from conducting necessary discovery pertaining to her. (*Id.* at 9.) Defendants
14 oppose Plaintiff's request to amend, arguing that Plaintiff failed to attach his proposed amended
15 complaint to his motion as required by the local rules, and that permitting amendment would
16 prejudice Defendants and would be futile. (Dkt. # 28.)

17 Local Civil Rule (LCR) 15 requires that a copy of the proposed amended pleading be
18 attached as an exhibit to any motion seeking leave to amend a pleading. The record confirms that
19 Plaintiff did not attach a copy of his proposed amended pleading to his motion, though he claims
20 in his reply to Defendants' response that he has been "diligently working-on researching, and
21 drafting the amended complaint for filing." (Dkt. # 29 at 2.) Plaintiff attributes the delay in filing
22 his proposed amended complaint to the "dilatory actions" of Defendants. (*Id.*) The dilatory
23

1 actions Plaintiff complains of appear to simply be a reference to the late disclosure of Ms.
2 O'Reilly by Defendants. (*See id.* at 2; Dkt. # 27 at 8-9.)

3 Plaintiff offers no facts to support his allegation that Defendants intentionally withheld
4 Ms. Reilly's name in an effort to undermine Plaintiff's ability to litigate this action. Moreover,
5 this delayed disclosure in no way explains or justifies Plaintiff's failure to submit a proposed
6 amended pleading with his motion. Given the nature of Plaintiff's claims, it should have been a
7 relatively simple matter for him to draft and submit a proposed amended pleading incorporating
8 the name of the newly discovered Defendant. Instead, Plaintiff apparently focused his efforts on
9 drafting a needlessly long motion to amend and compiling a large number of exhibits that are
10 completely unnecessary to resolution of issues relating to amendment. Ultimately, these efforts
11 were unavailing given Plaintiff's failure to comply with the basic procedural rules set forth in
12 LCR 15.

13 Though this procedural deficiency is, by itself, fatal to Plaintiff's motion, the Court also
14 notes that it appears likely Plaintiff's proposed amendment would, in any event, be futile. The
15 Court has reviewed Defendants' pending summary judgment motion and, though the Court is not
16 at this juncture issuing a ruling on that motion, it is difficult to envision how simply adding Ms.
17 O'Reilly as a Defendant to this action would in any way affect the viability of Plaintiff's claims.

18 **B. Motion for Show Cause Hearing and Sanctions**

19 Plaintiff also seeks an order directing Defendants to appear for a hearing and show cause
20 why sanctions should not be imposed against them. (Dkt. # 30.) According to Plaintiff, the
21 purpose of the proposed show cause hearing would be to determine if two individuals who
22 submitted evidence in support of Defendants' summary judgment motion provided false and/or
23 misleading information to the Court. (*Id.* at 3.) Defendants oppose Plaintiff's motion, arguing

1 that Plaintiff has not established a basis for this Court to issue a show cause order or sanctions.
2 (Dkt. # 31.) The Court agrees and, in fact, finds the instant motion frivolous. Any disputes
3 Plaintiff has pertaining to evidence presented by Defendants in support of their summary
4 judgment motion are properly raised in the context of that motion and not as a collateral matter.
5 Plaintiff, to date, has not filed a response to Defendants' summary judgment motion, likely
6 because he was focused on litigating his motion to amend. Now that the Court has issued a ruling
7 on that motion, it will grant Plaintiff an opportunity to file a proper response to Defendants'
8 summary judgment motion. Plaintiff may incorporate into his response any arguments he has
9 concerning the viability of Defendants' evidence. If, after Plaintiff files such a response, the
10 Court deems a hearing necessary, it will so advise the parties.

11 III. CONCLUSION

12 Based on the foregoing, Plaintiff's motions for leave to amend his complaint (dkt. # 27)
13 and for a show cause hearing and sanctions (dkt. # 30) are DENIED. Plaintiff is GRANTED
14 leave to file an out-of-time response to Defendants' pending motion for summary judgment.
15 Plaintiff is directed to file his response not later than **June 26, 2020**. Defendants' motion for
16 summary judgment (dkt. # 19) is RE-NOTED for consideration on **July 3, 2020**. The Clerk is
17 directed to send copies of this Order to Plaintiff, to counsel for Defendants, and to the Honorable
18 Barbara J. Rothstein.

19 DATED this 12th day of May, 2020.

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22 MICHELLE L. PETERSON
23 United States Magistrate Judge